

ALTERNATIVE DISPUTE RESOLUTION ACT OF 1998

APRIL 21, 1998.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. COBLE, from the Committee on the Judiciary,
submitted the following

R E P O R T

[To accompany H.R. 3528]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3528) to amend title 28, United States Code, with respect to the use of alternative dispute resolution processes in United States district courts, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:
Strike out all after the enacting clause and insert in lieu there-
of the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Alternative Dispute Resolution Act of 1998”.

SEC. 2. ALTERNATIVE DISPUTE RESOLUTION PROCESSES TO BE AUTHORIZED IN ALL DISTRICT COURTS.

Section 651 of title 28, United States Code, is amended to read as follows:

“§ 651. Authorization of alternative dispute resolution

“(a) **DEFINITION.**—For purposes of this chapter, an alternative dispute resolution process includes any process or procedure, other than an adjudication by a presiding judge, in which a neutral third party participates to assist in the resolution of issues in controversy, through processes such as early neutral evaluation, mediation, minitrial, and arbitration as provided in sections 654 through 658.

“(b) **AUTHORITY.**—Each United States district court shall authorize, by local rule, the use of alternative dispute resolution processes in all civil actions, including adversary proceedings in bankruptcy, in accordance with this chapter, except that the use of arbitration may be authorized only as provided in section 654. Each United States district court shall devise and implement its own alternative dispute resolution program by local rule to encourage and promote the use of alternative dispute resolution in its district.

“(c) **EXISTING ALTERNATIVE DISPUTE RESOLUTION PROGRAMS.**—In those courts where an alternative dispute resolution program is in place on the date of the enactment of the Alternative Dispute Resolution Act of 1998, the court shall examine the effectiveness of that program and adopt such improvements to the program as are consistent with the provisions and purposes of this chapter.

“(d) **ADMINISTRATION OF ALTERNATIVE DISPUTE RESOLUTION PROGRAMS.**—Each United States district court shall retain or designate an existing employee knowledgeable in alternative dispute resolution practices and processes to implement, administer, oversee, and evaluate the court’s alternative dispute resolution program. Such person may also be responsible for recruiting, screening, and training attorneys to serve as neutrals and arbitrators in the court’s alternative dispute resolution program.

“(e) **TITLE 9 NOT AFFECTED.**—This chapter shall not affect title 9.

“(f) **PROGRAM SUPPORT.**—The Federal Judicial Center and the Administrative Office of the United States Courts are authorized to assist the district courts in the establishment and improvement of alternative dispute resolution programs by identifying particular practices employed in successful programs and providing additional assistance as needed and appropriate.”.

SEC. 3. JURISDICTION.

Section 652 of title 28, United States Code, is amended to read as follows:

“§ 652. Jurisdiction

“(a) **CONSIDERATION OF ALTERNATIVE DISPUTE RESOLUTION IN APPROPRIATE CASES.**—Notwithstanding any provision of law to the contrary and except as provided in subsections (b) and (c), each district court shall, by local rule, require that litigants in all civil cases consider the use of an alternative dispute resolution process at an appropriate stage in the litigation. Each district court shall provide litigants in all civil cases with a choice of alternative dispute resolution processes, including, but not limited to, mediation, early neutral evaluation, minitrial, and arbitration as authorized in sections 654 through 658. Any district court that elects to require the use of alternative dispute resolution in certain cases may do so only with respect to mediation, early neutral evaluation, and, if the parties consent, arbitration.

“(b) **ACTIONS EXEMPTED FROM CONSIDERATION OF ALTERNATIVE DISPUTE RESOLUTION.**—Each district court may exempt from the requirements of this section specific cases or categories of cases in which use of alternative dispute resolution would not be appropriate. In defining these exemptions, each district court shall consult with members of the bar, including the United States Attorney for that district.

“(c) **AUTHORITY OF THE ATTORNEY GENERAL.**—Nothing in this section shall alter or conflict with the authority of the Attorney General to conduct litigation on behalf of the United States, with the authority of any Federal agency authorized to conduct litigation in the United States courts, or with any delegation of litigation authority by the Attorney General.

“(d) **CONFIDENTIALITY PROVISIONS.**—Until such time as rules are adopted pursuant to chapter 131 of this title providing for the confidentiality of alternative dispute resolution processes under this chapter, each district court shall by local rule provide for the confidentiality of the alternative dispute resolution processes and to prohibit disclosure of confidential dispute resolution communications.”.

SEC. 4. MEDIATORS AND NEUTRAL EVALUATORS.

Section 653 of title 28, United States Code, is amended to read as follows:

“§ 653. Neutrals

“(a) **PANEL OF NEUTRALS.**—Each district court that authorizes the use of alternative dispute resolution processes shall maintain a panel of neutrals available for use by the parties for each category of process offered. Each district court shall promulgate its own procedures and criteria for the selection of neutrals on its panels.

“(b) **QUALIFICATIONS AND TRAINING.**—Each person serving as a neutral in an alternative dispute resolution process should be qualified and trained to serve as a neutral in the appropriate alternative dispute resolution process. For this purpose, the district court may use, among others, magistrate judges who have been trained to serve as neutrals in alternative dispute resolution processes, professional neutrals from the private sector, and persons who have been trained to serve as neutrals in alternative dispute resolution processes. Until such time as rules are adopted pursuant to chapter 131 of this title relating to the disqualification of neutrals, each district court shall issue rules relating to the disqualification of neutrals (including, where appropriate, disqualification under section 455 of this title, other applicable law, and professional responsibility standards).”.

SEC. 5. ACTIONS REFERRED TO ARBITRATION.

Section 654 of title 28, United States Code, is amended to read as follows:

“§ 654. Arbitration

“(a) **REFERRAL OF ACTIONS TO ARBITRATION.**—Notwithstanding any provision of law to the contrary and except as provided in subsections (b) and (c) of section 652 and subsection (d) of this section, a district court may allow the referral to arbitration of any civil action (including any adversary proceeding in bankruptcy) pending before it, except that referral to arbitration may not be made where—

“(1) the action is based on an alleged violation of a right secured by the Constitution of the United States;

“(2) jurisdiction is based in whole or in part on section 1343 of this title;

or

“(3) the relief sought consists of money damages in an amount greater than \$150,000.

“(b) **SAFEGUARDS IN CONSENT CASES.**—Until such time as rules are adopted pursuant to chapter 131 of this title relating to procedures described in this subsection, the district court shall by local rule establish procedures to ensure that any civil action in which arbitration by consent is allowed under subsection (a)—

“(1) consent to arbitration is freely and knowingly obtained; and

“(2) no party or attorney is prejudiced for refusing to participate in arbitration.

“(c) **PRESUMPTIONS.**—For purposes of subsection (a)(3), a district court may presume damages are not in excess of \$150,000 unless counsel certifies that damages exceed such amount.

“(d) **EXISTING PROGRAMS.**—Nothing in this section is deemed to affect any action in which arbitration is conducted pursuant to section 906 of the Judicial Improvements and Access to Justice Act (Public Law 100–102), as in effect prior to the date of its repeal.”.

SEC. 6. ARBITRATORS.

Section 655 of title 28, United States Code, is amended to read as follows:

“§ 655. Arbitrators

“(a) **POWERS OF ARBITRATORS.**—An arbitrator to whom an action is referred under section 654 shall have the power, within the judicial district of the district court which referred the action to arbitration—

“(1) to conduct arbitration hearings;

“(2) to administer oaths and affirmations; and

“(3) to make awards.

“(b) **STANDARDS FOR CERTIFICATION.**—Each district court that authorizes arbitration shall establish standards for the certification of arbitrators and shall certify arbitrators to perform services in accordance with such standards and this chapter. The standards shall include provisions requiring that any arbitrator—

“(1) shall take the oath or affirmation described in section 453; and

“(2) shall be subject to the disqualification rules under section 455.

“(c) **IMMUNITY.**—All individuals serving as arbitrators in an alternative dispute resolution program under this chapter are performing quasi-judicial functions and

are entitled to the immunities and protections that the law accords to persons serving in such capacity.”.

SEC. 7. SUBPOENAS.

Section 656 of title 28, United States Code, is amended to read as follows:

“§ 656. Subpoenas

“Rule 45 of the Federal Rules of Civil Procedure (relating to subpoenas) applies to subpoenas for the attendance of witnesses and the production of documentary evidence at an arbitration hearing under this chapter.”.

SEC. 8. ARBITRATION AWARD AND JUDGMENT.

Section 657 of title 28, United States Code, is amended to read as follows:

“§ 657. Arbitration award and judgment

“(a) FILING AND EFFECT OF ARBITRATION AWARD.—An arbitration award made by an arbitrator under this chapter, along with proof of service of such award on the other party by the prevailing party or by the plaintiff, shall be filed promptly after the arbitration hearing is concluded with the clerk of the district court that referred the case to arbitration. Such award shall be entered as the judgment of the court after the time has expired for requesting a trial de novo. The judgment so entered shall be subject to the same provisions of law and shall have the same force and effect as a judgment of the court in a civil action, except that the judgment shall not be subject to review in any other court by appeal or otherwise.

“(b) SEALING OF ARBITRATION AWARD.—The district court shall provide by local rule that the contents of any arbitration award made under this chapter shall not be made known to any judge who might be assigned to the case until the district court has entered final judgment in the action or the action has otherwise terminated.

“(c) TRIAL DE NOVO OF ARBITRATION AWARDS.—

“(1) TIME FOR FILING DEMAND.—Within 30 days after the filing of an arbitration award with a district court under subsection (a), any party may file a written demand for a trial de novo in the district court.

“(2) ACTION RESTORED TO COURT DOCKET.—Upon a demand for a trial de novo, the action shall be restored to the docket of the court and treated for all purposes as if it had not been referred to arbitration.

“(3) EXCLUSION OF EVIDENCE OF ARBITRATION.—The court shall not admit at the trial de novo any evidence that there has been an arbitration proceeding, the nature or amount of any award, or any other matter concerning the conduct of the arbitration proceeding, unless—

“(A) the evidence would otherwise be admissible in the court under the Federal Rules of Evidence; or

“(B) the parties have otherwise stipulated.”.

SEC. 9. COMPENSATION OF ARBITRATORS AND NEUTRALS.

Section 658 of title 28, United States Code, is amended to read as follows:

“§ 658. Compensation of arbitrators and neutrals

“(a) COMPENSATION.—The district court shall, subject to limits set by the Judicial Conference of the United States, establish and pay the amount of compensation, if any, that each arbitrator or neutral shall receive for services rendered in each case under this chapter.

“(b) TRANSPORTATION ALLOWANCES.—Under regulations prescribed by the Director of the Administrative Office of the United States Courts, a district court may reimburse arbitrators for actual transportation expenses necessarily incurred in the performance of duties under this chapter.”.

SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out chapter 44 of title 28, United States Code, as amended by this Act.

SEC. 11. CONFORMING AMENDMENTS.

(a) LIMITATION ON MONEY DAMAGES.—Section 901 of the Judicial Improvements and Access to Justice Act (28 U.S.C. 652 note) is amended by striking subsection (c).

(b) OTHER CONFORMING AMENDMENTS.—(1) The chapter heading for chapter 44 of title 28, United States Code, is amended to read as follows:

“CHAPTER 44—ALTERNATIVE DISPUTE RESOLUTION”.

(2) The table of contents for chapter 44 of title 28, United States Code, is amended to read as follows:

“Sec.
 “651. Authorization of alternative dispute resolution.
 “652. Jurisdiction.
 “653. Neutrals.
 “654. Arbitration.
 “655. Arbitrators.
 “656. Subpoenas.
 “657. Arbitration award and judgment.
 “658. Compensation of arbitrators and neutrals.”.

(3) The item relating to chapter 44 in the table of chapters for Part III of title 28, United States Code, is amended to read as follows:

“44. Alternative Dispute Resolution 651”.

PURPOSE AND SUMMARY

H.R. 3528 is designed to address the problem of the high case-loads burdening the federal courts. This legislation will provide a quicker, more efficient method by which to resolve some federal cases when the parties or the courts so choose. H.R. 3528 directs each federal trial court to establish some form of alternative dispute resolution (“ADR”), which could include arbitration, mediation, mini trials, or early neutral evaluation or some combination of those for certain civil cases. The bill also provides for the confidentiality of the alternative dispute resolution process and prohibits the disclosure of such confidential communications. It also directs the courts to establish standards for the neutrals and arbitrators to follow, and authorizes the Judicial Conference and the Administrative Office of the United States Courts to assist courts with their programs.

This legislation will provide the federal courts with the tools necessary to present quality alternatives to expensive federal litigation.

BACKGROUND AND NEED FOR LEGISLATION

Over the past years, the Article III Federal Courts have witnessed an explosion in the number of cases brought before them. On March 10, 1998, the Administrative Office of the U.S. Courts issued a report which indicated the caseload of the Federal Judiciary increased in fiscal year 1997 to historic levels in nearly every category. Filings in the courts of appeals rose 1 percent to reach an all-time high. Total filings in the district courts rose 2 percent, with civil case filings increasing for the fourth consecutive year, with criminal case filings reaching their highest levels since 1933. Bankruptcy filings climbed 23 percent to a record level and the number of persons under the supervision of the federal probation system increased 3 percent. The number of civil and criminal cases filed in district courts totaled 322,390 in 1997, a 2 percent increase over 1996. The increase sent filings per authorized judgeship up from 490 to 498.

The burdens of these sky-rocketing numbers have not been lost on the Congress, particularly because such numbers reflect directly on citizens’ ability to have their day in court. This bill incorporates various suggestions of a number of witnesses who testified at the Subcommittee hearing, and suggested courts should be able to de-

cide which alternative dispute resolution (“ADR”) method is best suited for that particular court. The legislation expands the current arbitration programs operating in twenty districts throughout the country by requiring each District Court to establish some form of ADR.

HEARINGS

The provisions of this legislation were considered during a legislative hearing on H.R. 2603, the “Alternative Dispute Resolution and Settlement Encouragement Act” on October 9, 1997. Testifying at the hearing on the issue of alternative dispute resolution were Peter R. Steenland, Senior Counsel for ADR, United States Department of Justice; Judge E. Brock Hornby, United States Chief District Judge for the District of Maine; Professor E. Allan Lind of the Fuqua School of Business, Duke University; and Mitchell F. Dolin on behalf of the American Bar Association.

COMMITTEE CONSIDERATION

The Subcommittee on Courts and Intellectual Property conducted a markup on a Committee Print of this legislation on March 18, 1998. The Subcommittee reported the Committee Print to the Full Committee for further consideration by voice vote. The print introduced as H.R. 3528 on March 23, 1998, by Subcommittee Chairman Howard Coble. On March 24, 1998, the Committee met in open session and ordered reported favorably the bill H.R. 3528, as amended, by voice vote, a quorum being present.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of Rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(1)(3)(B) of House Rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(1)(C)(3) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 3528, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 20 16, 1998.

Hon. HENRY J. HYDE,
*Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.*

The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3528, the Alternative Dispute Resolution Act of 1998.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Susanne S. Mehlman (for federal costs), who can be reached at 226-2860, and Leo Lex (for the state and local impact), who can be reached at 225-3220.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

cc: Honorable John Conyers, Jr.,
Ranking Minority Member.

H.R. 3528—Alternative Dispute Resolution Act of 1998

CBO estimates that implementing H.R. 3528 would result in no significant net costs to the federal government. Because this bill would not affect direct spending or receipts, pay-as-you-go procedures would not apply. The legislation contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995. The bill would only affect the budgets of state, local, or tribal governments if those governments were parties to a case in federal district court and if they chose to participate in an alternative form of dispute resolution. In those cases, state, local, and tribal governments might realize some savings from lower litigation costs.

Enacting H.R. 3528 would require all 94 federal district courts to establish an alternative dispute resolution (ADR) program for resolving certain civil cases. An ADR program could include such processes as arbitration, mediation, neutral evaluation, and mini-trials. Under the bill, the courts could mandate that litigants in a civil case use an ADR process, except arbitration, which would require the consent of all parties to the case. According to the Administrative Office of the United States Courts (AOUSC), about 75 federal district courts presently have some form of ADR in operation.

Based on information from the AOUSC, CBO expects that under H.R. 3528 the district courts without an ADR program (fewer than 20) would establish some type of program beginning in fiscal year 1999. Because the bill also would require that an existing employee in each district administer the ADR program, CBO expects that additional appropriations would be required only to fund the expenses of arbitrators and other neutral parties that would be used in the various ADR processes for those district courts without an existing program. Based on current costs required to support a typical program's expenses, CBO estimates that such expenditures would average about \$6,000 (in 1998 dollars) per district each year. Costs in subsequent years could increase if participation in the ADR programs increases as courts become more accustomed to using alter-

natives to trials. In any case, CBO estimates that added costs would be less than \$500,000 annually, subject to the availability of appropriated funds.

CBO expects that expanding the use of ADR processes to all district courts could yield some net savings in the costs of court administration. However, CBO expects that any such savings would not be significant over the next five years.

The staff contacts for this estimate are Susanne S. Mehlman (for federal costs), who can be reached at 226–2860, and Leo Lex (for the state and local impact), who can be reached at 225–3220. This estimate was approved by Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to Rule XI, clause 2(1)(4) of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article III, section 1 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Section One:

The short title of the act will be the “Alternative Dispute Resolution Act of 1998.”

Section Two: Alternative Dispute Resolution

This section requires all Federal district courts to establish an alternative dispute resolution (ADR) program, which in the discretion of the court could be either voluntary or mandatory. Under no circumstances shall a court be able to mandate a party to participate in arbitration. Alternative dispute resolution may include such processes as early neutral evaluation, mediation, mini trials, and arbitration. This will provide more options for litigants, while reducing cost, delay, and court burdens. In those courts where an ADR program is already in place, the court will examine that program’s effectiveness and make such improvements as are consistent with this legislation. Each District Court shall designate or retain an employee to administer the court’s ADR program. The Federal Judicial Center and the Administrative Office of the United States Courts shall assist the courts in the establishment and improvement of ADR programs.

Section Three: Jurisdiction

Each District Court shall provide litigants in all civil cases a choice of alternative dispute resolution processes. If a court requires the use of ADR by local rule, it may only do so with respect to mediation or early neutral evaluation. Courts may not require litigants to participate in mini trials or arbitration. Each District Court may exempt specific cases or categories of cases in which the use of ADR would not be appropriate. Nothing in this legislation would conflict with the authority of the Attorney General to conduct litigation on behalf of the United States, or with the authority of any federal agency to conduct litigation in the United States, or with any delegation of litigation authority by the Attorney General. Until adopted pursuant to the Rules Enabling Act, each District

Court shall enact local rules to provide for confidentiality of the ADR processes and to prohibit disclosure of confidential dispute resolution communications.

Section Four: Mediators and Neutral Evaluators

Each court which authorizes the use of alternative dispute resolution processes shall maintain a panel of neutrals available for use by litigants. Each District Court shall promulgate its own procedures and criteria for selecting neutrals. Each neutral shall be qualified and trained to assist in the ADR process. Each District Court may use trained Magistrate Judges, professional neutrals from the private sector, and persons trained to serve the ADR process. Each District shall issue rules relating to the qualifications of neutrals, until such rules are adopted pursuant to the Rules Enabling Act.

Section Five: Actions Referred To Arbitration

This section, and several of the succeeding sections, address the use of arbitration as a method of alternative dispute resolution. A District Court may allow the referral to arbitration of any civil action pending before it, except that referral to arbitration may not be made where (1) the action is based on an alleged violation of a right secured by the Constitution of the United States, or (2) jurisdiction is based in whole or in part on section 1343 of this title, or (3) the relief sought consists of money damages in an amount greater than \$150,000. Where consent to arbitration is required, the District Court shall establish procedures to ensure that consent to arbitration is freely and knowingly obtained, and no party or attorney is prejudiced for refusing to participate in arbitration. A District Court may presume damages are not in excess of \$150,000 unless counsel certifies that the damages exceed that amount. Nothing in this section affects the operation of existing mandatory arbitration programs conducted pursuant to section 906 of Title IX of Public Law 100-702.

Section Six: Arbitrators

An arbitrator to whom an action is referred shall have the power within the judicial district of that District Court to conduct arbitration hearings, to administer oaths and affirmations, and to make awards. Each court shall establish standards for the certification of arbitrators which shall include provisions requiring that any arbitrator take the oath or affirmation described in section 453, and shall be subject to the disqualification rules of section 455. All individuals serving as arbitrators are performing quasi-judicial functions and are entitled to the immunities and protections that the law accords those serving in such capacity.

Section Seven: Subpoenas

This section clarifies that Rule 45 of the Federal Rules of Civil Procedure applies to subpoenas for the attendance of witnesses and the production of evidence at an arbitration.

Section Eight: Arbitration Award and Judgment

An arbitration award made by an arbitrator shall be filed promptly after the hearing is concluded with the appropriate clerk of the district court. After time has expired for requesting a trial *de novo*, the award shall be entered as the judgment of the court. By local rule, the district court shall provide that the contents of any arbitration award shall not be made known until the final judgment has been entered by the court. Any party may file a written demand for a trial *de novo* within thirty days after the filing of an arbitration award. That action shall be restored to the court's docket as if it had not been referred to arbitration. No evidence from the arbitration proceeding shall be admissible at the trial *de novo*, unless otherwise admissible under the Federal Rules of Evidence or unless the parties stipulate.

Section Nine: Compensation of Arbitrators and Neutrals

The district court shall establish and pay the amount of compensation, if any, that each arbitrator or neutral shall receive for services rendered. This compensation shall be subject to limits set by the Judicial Conference of the United States. The court may also reimburse arbitrators for the actual transportation expenses incurred in the performance of their duties.

Section Ten: Authorization of Appropriations

This section authorizes the annual appropriations of such sums necessary to carry out the provisions of this legislation.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TITLE 28, UNITED STATES CODE

* * * * *

PART III—COURT OFFICERS AND EMPLOYEES

| Chap. | Sec. |
|--|-------------------|
| * * * * * | |
| [44. Arbitration | 651] |
| <i>44. Alternative Dispute Resolution</i> | <i>651</i> |
| * * * * * | |

[CHAPTER 44—ARBITRATION

| Sec. | |
|--------------|--|
| [651. | Authorization of arbitration. |
| [652. | Jurisdiction. |
| [653. | Powers of arbitrator; arbitration hearing. |
| [654. | Arbitration award and judgment. |
| [655. | Trial <i>de novo</i> . |
| [656. | Certification of arbitrators. |

¶657. Compensation of arbitrators.

¶658. District courts that may authorize arbitration.

¶§ 651. Authorization of arbitration

[(a) AUTHORITY OF CERTAIN DISTRICT COURTS.—Each United States district court described in section 658 may authorize by local rule the use of arbitration in any civil action, including an adversary proceeding in bankruptcy. A district court described in section 658(1) may refer any such action to arbitration as set forth in section 652(a). A district court described in section 658(2) may refer only such actions to arbitration as are set forth in section 652(a)(1)(A).

[(b) TITLE 9 Not Affected.—This chapter shall not affect title 9.

¶§ 652. Jurisdiction

[(a) ACTIONS THAT MAY BE REFERRED TO ARBITRATION.—(1) Notwithstanding any provision of law to the contrary and except as provided in subsections (b) and (c) of this section, and section 901(c) of the Judicial Improvements and Access to Justice Act, a district court that authorizes arbitration under section 651 may—

[(A) allow the referral to arbitration of any civil action (including any adversary proceeding in bankruptcy) pending before it if the parties consent to arbitration, and

[(B) require the referral to arbitration of any civil action pending before it if the relief sought consists only of money damages not in excess of \$100,000 or such lesser amount as the district court may set, exclusive of interest and costs.

[(2) For purposes of paragraph (1)(B), a district court may presume damages are not in excess of \$100,000 unless counsel certifies that damages exceed such amount.

[(b) ACTIONS THAT MAY NOT BE REFERRED WITHOUT CONSENT OF PARTIES.—Referral to arbitration under subsection (a)(1)(B) may not be made—

[(1) of an action based on an alleged violation of a right secured by the Constitution of the United States, or

[(2) if jurisdiction is based in whole or in part on section 1343 of this title.

[(c) EXCEPTIONS FROM ARBITRATION.—Each district court shall establish by local rule procedures for exempting, sua sponte or on motion of a party, any case from arbitration in which the objectives of arbitration would not be realized—

[(1) because the case involves complex or novel legal issues,

[(2) because legal issues predominate over factual issues, or

[(3) for other good cause.

[(d) SAFEGUARDS IN CONSENT CASES.—In any civil action in which arbitration by consent is allowed under subsection (a)(1)(A), the district court shall by local rule establish procedures to ensure that—

[(1) consent to arbitration is freely and knowingly obtained, and

[(2) no party or attorney is prejudiced for refusing to participate in arbitration.

[§ 653. Powers of arbitrator; arbitration hearing

[(a) POWERS.—An arbitrator to whom an action is referred under section 652 shall have, within the judicial district of the district court which referred the action to arbitration, the power—

- [(1) to conduct arbitration hearings,
- [(2) to administer oaths and affirmations, and
- [(3) to make awards.

[(b) TIME FOR BEGINNING ARBITRATION HEARING.—An arbitration hearing under this chapter shall begin within a time period specified by the district court, but in no event later than 180 days after the filing of an answer, except that the arbitration proceeding shall not, in the absence of the consent of the parties, commence until 30 days after the disposition by the district court of any motion to dismiss the complaint, motion for judgment on the pleadings, motion to join necessary parties, or motion for summary judgment, if the motion was filed during a time period specified by the district court. The 180-day and 30-day periods specified in the preceding sentence may be modified by the court for good cause shown.

[(c) SUBPOENAS.—Rule 45 of the Federal Rules of Civil Procedure (relating to subpoenas) applies to subpoenas for the attendance of witnesses and the production of documentary evidence at an arbitration hearing under this chapter.

[§ 654. Arbitration award and judgment

[(a) FILING AND EFFECT OF ARBITRATION AWARD.—An arbitration award made by an arbitrator under this chapter, along with proof of service of such award on the other party by the prevailing party or by the plaintiff, shall, promptly after the arbitration hearing is concluded, be filed with the clerk of the district court that referred the case to arbitration. Such award shall be entered as the judgment of the court after the time has expired for requesting a trial de novo under section 655. The judgment so entered shall be subject to the same provisions of law and shall have the same force and effect as a judgment of the court in a civil action, except that the judgment shall not be subject to review in any other court by appeal or otherwise.

[(b) SEALING OF ARBITRATION AWARD.—The district court shall provide by local rule that the contents of any arbitration award made under this chapter shall not be made known to any judge who might be assigned to the case—

- [(1) except as necessary for the court to determine whether to assess costs or attorney fees under section 655,
- [(2) until the district court has entered final judgment in the action or the action has been otherwise terminated, or
- [(3) except for purposes of preparing the report required by section 903(b) of the Judicial Improvements and Access to Justice Act.

[(c) TAXATION OF COSTS.—The district court may by rule allow for the inclusion of costs as provided in section 1920 of this title as a part of the arbitration award.

§ 655. Trial de novo

[(a) TIME FOR DEMAND.—Within 30 days after the filing of an arbitration award with a district court under section 654, any party may file a written demand for a trial de novo in the district court.

[(b) RESTORATION TO COURT DOCKET.—Upon a demand for a trial de novo, the action shall be restored to the docket of the court and treated for all purposes as if it had not been referred to arbitration. In such a case, any right of trial by jury that a party otherwise would have had, as well as any place on the court calendar which is no later than that which a party otherwise would have had, are preserved.

[(c) LIMITATION ON ADMISSION OF EVIDENCE.—The court shall not admit at the trial de novo any evidence that there has been an arbitration proceeding, the nature or amount of any award, or any other matter concerning the conduct of the arbitration proceeding, unless—

[(1) the evidence would otherwise be admissible in the court under the Federal Rules of Evidence, or

[(2) the parties have otherwise stipulated.

[(d) TAXATION OF ARBITRATOR FEES AS COST.—(1)(A) A district court may provide by rule that, in any trial de novo under this section, arbitrator fees paid under section 657 may be taxed as costs against the party demanding the trial de novo.

[(B) Such rule may provide that a party demanding a trial de novo under subsection (a), other than the United States or its agencies or officers, shall deposit a sum equal to such arbitrator fees as advanced payment of such costs, unless the party is permitted to proceed in forma pauperis.

[(2) Arbitrator fees shall not be taxed as costs under paragraph (1)(A), and any sum deposited under paragraph (1)(B) shall be returned to the party demanding the trial de novo, if—

[(A) the party demanding the trial de novo obtains a final judgment more favorable than the arbitration award, or

[(B) the court determines that the demand for the trial de novo was made for good cause.

[(3) Any arbitrator fees taxed as costs under paragraph (1)(A), and any sum deposited under paragraph (1)(B) that is not returned to the party demanding the trial de novo, shall be paid to the Treasury of the United States.

[(4) Any rule under this subsection shall provide that no penalty for demanding a trial de novo, other than that provided in this subsection, shall be assessed by the court.

[(e) ASSESSMENT OF COSTS AND ATTORNEY FEES.—In any trial de novo demanded under subsection (a) in which arbitration was done by consent of the parties, a district court may assess costs, as provided in section 1920 of this title, and reasonable attorney fees against the party demanding the trial de novo if—

[(1) such party fails to obtain a judgment, exclusive of interest and costs, in the court which is substantially more favorable to such party than the arbitration award, and

[(2) the court determines that the party's conduct in seeking a trial de novo was in bad faith.

【§ 656. Certification of arbitrators

【(a) STANDARDS FOR CERTIFICATION.—Each district court listed in section 658 shall establish standards for the certification of arbitrators and shall certify arbitrators to perform services in accordance with such standards and this chapter. The standards shall include provisions requiring that any arbitrator—

【(1) shall take the oath or affirmation described in section 453, and

【(2) shall be subject to the disqualification rules of section 455.

【(b) TREATMENT OF ARBITRATOR AS INDEPENDENT CONTRACTOR AND SPECIAL GOVERNMENT EMPLOYEE.—An arbitrator is an independent contractor and is subject to the provisions of sections 201 through 211 of title 18 to the same extent as such provisions apply to a special Government employee of the executive branch. A person may not be barred from the practice of law because such person is an arbitrator.

【§ 657. Compensation of arbitrators

【(a) COMPENSATION.—The district court may, subject to limits set by the Judicial Conference of the United States, establish and pay the amount of compensation, if any, that each arbitrator shall receive for services rendered in each case.

【(b) TRANSPORTATION ALLOWANCES.—Under regulations prescribed by the Director of the Administrative Office of the United States Courts, a district court may reimburse arbitrators for actual transportation expenses necessarily incurred in the performance of duties under this chapter.

【§ 658. District courts that may authorize arbitration

【The district courts for the following judicial districts may authorize the use of arbitration under this chapter:

【(1) Northern District of California, Middle District of Florida, Western District of Michigan, Western District of Missouri, District of New Jersey, Eastern District of New York, Middle District of North Carolina, Western District of Oklahoma, Eastern District of Pennsylvania, and Western District of Texas.

【(2) Ten additional judicial districts, which shall be approved by the Judicial Conference of the United States. The Judicial Conference shall give notice of the 10 districts approved under this paragraph to the Federal Judicial Center and to the public.】

CHAPTER 44—ALTERNATIVE DISPUTE RESOLUTION

- Sec.
 651. *Authorization of alternative dispute resolution.*
 652. *Jurisdiction.*
 653. *Neutrals.*
 654. *Arbitration.*
 655. *Arbitrators.*
 656. *Subpoenas.*
 657. *Arbitration award and judgment.*
 658. *Compensation of arbitrators and neutrals.*

§ 651. Authorization of alternative dispute resolution

(a) *DEFINITION.*—For purposes of this chapter, an alternative dispute resolution process includes any process or procedure, other than an adjudication by a presiding judge, in which a neutral third party participates to assist in the resolution of issues in controversy, through processes such as early neutral evaluation, mediation, minitrial, and arbitration as provided in sections 654 through 658.

(b) *AUTHORITY.*—Each United States district court shall authorize, by local rule, the use of alternative dispute resolution processes in all civil actions, including adversary proceedings in bankruptcy, in accordance with this chapter, except that the use of arbitration may be authorized only as provided in section 654. Each United States district court shall devise and implement its own alternative dispute resolution program by local rule to encourage and promote the use of alternative dispute resolution in its district.

(c) *EXISTING ALTERNATIVE DISPUTE RESOLUTION PROGRAMS.*—In those courts where an alternative dispute resolution program is in place on the date of the enactment of the Alternative Dispute Resolution Act of 1998, the court shall examine the effectiveness of that program and adopt such improvements to the program as are consistent with the provisions and purposes of this chapter.

(d) *ADMINISTRATION OF ALTERNATIVE DISPUTE RESOLUTION PROGRAMS.*—Each United States district court shall retain or designate an existing employee knowledgeable in alternative dispute resolution practices and processes to implement, administer, oversee, and evaluate the court's alternative dispute resolution program. Such person may also be responsible for recruiting, screening, and training attorneys to serve as neutrals and arbitrators in the court's alternative dispute resolution program.

(e) *TITLE 9 NOT AFFECTED.*—This chapter shall not affect title 9.

(f) *PROGRAM SUPPORT.*—The Federal Judicial Center and the Administrative Office of the United States Courts are authorized to assist the district courts in the establishment and improvement of alternative dispute resolution programs by identifying particular practices employed in successful programs and providing additional assistance as needed and appropriate.

§ 652. Jurisdiction

(a) *CONSIDERATION OF ALTERNATIVE DISPUTE RESOLUTION IN APPROPRIATE CASES.*—Notwithstanding any provision of law to the contrary and except as provided in subsections (b) and (c), each district court shall, by local rule, require that litigants in all civil cases consider the use of an alternative dispute resolution process at an appropriate stage in the litigation. Each district court shall provide litigants in all civil cases with a choice of alternative dispute resolution processes, including, but not limited to, mediation, early neutral evaluation, minitrial, and arbitration as authorized in sections 654 through 658. Any district court that elects to require the use of alternative dispute resolution in certain cases may do so only with respect to mediation, early neutral evaluation, and, if the parties consent, arbitration.

(b) *ACTIONS EXEMPTED FROM CONSIDERATION OF ALTERNATIVE DISPUTE RESOLUTION.*—Each district court may exempt from the re-

quirements of this section specific cases or categories of cases in which use of alternative dispute resolution would not be appropriate. In defining these exemptions, each district court shall consult with members of the bar, including the United States Attorney for that district.

(c) *AUTHORITY OF THE ATTORNEY GENERAL.*—Nothing in this section shall alter or conflict with the authority of the Attorney General to conduct litigation on behalf of the United States, with the authority of any Federal agency authorized to conduct litigation in the United States courts, or with any delegation of litigation authority by the Attorney General.

(d) *CONFIDENTIALITY PROVISIONS.*—Until such time as rules are adopted pursuant to chapter 131 of this title providing for the confidentiality of alternative dispute resolution processes under this chapter, each district court shall by local rule provide for the confidentiality of the alternative dispute resolution processes and to prohibit disclosure of confidential dispute resolution communications.

§653. Neutrals

(a) *PANEL OF NEUTRALS.*—Each district court that authorizes the use of alternative dispute resolution processes shall maintain a panel of neutrals available for use by the parties for each category of process offered. Each district court shall promulgate its own procedures and criteria for the selection of neutrals on its panels.

(b) *QUALIFICATIONS AND TRAINING.*—Each person serving as a neutral in an alternative dispute resolution process should be qualified and trained to serve as a neutral in the appropriate alternative dispute resolution process. For this purpose, the district court may use, among others, magistrate judges who have been trained to serve as neutrals in alternative dispute resolution processes, professional neutrals from the private sector, and persons who have been trained to serve as neutrals in alternative dispute resolution processes. Until such time as rules are adopted pursuant to chapter 131 of this title relating to the disqualification of neutrals, each district court shall issue rules relating to the disqualification of neutrals (including, where appropriate, disqualification under section 455 of this title, other applicable law, and professional responsibility standards).

§654. Arbitration

(a) *REFERRAL OF ACTIONS TO ARBITRATION.*—Notwithstanding any provision of law to the contrary and except as provided in subsections (b) and (c) of section 652 and subsection (d) of this section, a district court may allow the referral to arbitration of any civil action (including any adversary proceeding in bankruptcy) pending before it, except that referral to arbitration may not be made where—

- (1) the action is based on an alleged violation of a right secured by the Constitution of the United States;
- (2) jurisdiction is based in whole or in part on section 1343 of this title; or
- (3) the relief sought consists of money damages in an amount greater than \$150,000.

(b) *SAFEGUARDS IN CONSENT CASES.*—Until such time as rules are adopted pursuant to chapter 131 of this title relating to procedures described in this subsection, the district court shall by local rule establish procedures to ensure that any civil action in which arbitration by consent is allowed under subsection (a)—

(1) consent to arbitration is freely and knowingly obtained; and

(2) no party or attorney is prejudiced for refusing to participate in arbitration.

(c) *PRESUMPTIONS.*—For purposes of subsection (a)(3), a district court may presume damages are not in excess of \$150,000 unless counsel certifies that damages exceed such amount.

(d) *EXISTING PROGRAMS.*—Nothing in this section is deemed to affect any action in which arbitration is conducted pursuant to section 906 of the Judicial Improvements and Access to Justice Act (Public Law 100–102), as in effect prior to the date of its repeal.

§ 655. Arbitrators

(a) *POWERS OF ARBITRATORS.*—An arbitrator to whom an action is referred under section 654 shall have the power, within the judicial district of the district court which referred the action to arbitration—

(1) to conduct arbitration hearings;

(2) to administer oaths and affirmations; and

(3) to make awards.

(b) *STANDARDS FOR CERTIFICATION.*—Each district court that authorizes arbitration shall establish standards for the certification of arbitrators and shall certify arbitrators to perform services in accordance with such standards and this chapter. The standards shall include provisions requiring that any arbitrator—

(1) shall take the oath or affirmation described in section 453; and

(2) shall be subject to the disqualification rules under section 455.

(c) *IMMUNITY.*—All individuals serving as arbitrators in an alternative dispute resolution program under this chapter are performing quasi-judicial functions and are entitled to the immunities and protections that the law accords to persons serving in such capacity.

§ 656. Subpoenas

Rule 45 of the Federal Rules of Civil Procedure (relating to subpoenas) applies to subpoenas for the attendance of witnesses and the production of documentary evidence at an arbitration hearing under this chapter.

§ 657. Arbitration award and judgment

(a) *FILING AND EFFECT OF ARBITRATION AWARD.*—An arbitration award made by an arbitrator under this chapter, along with proof of service of such award on the other party by the prevailing party or by the plaintiff, shall be filed promptly after the arbitration hearing is concluded with the clerk of the district court that referred the case to arbitration. Such award shall be entered as the judgment of the court after the time has expired for requesting a trial

de novo. The judgment so entered shall be subject to the same provisions of law and shall have the same force and effect as a judgment of the court in a civil action, except that the judgment shall not be subject to review in any other court by appeal or otherwise.

(b) **SEALING OF ARBITRATION AWARD.**—The district court shall provide by local rule that the contents of any arbitration award made under this chapter shall not be made known to any judge who might be assigned to the case until the district court has entered final judgment in the action or the action has otherwise terminated.

(c) **TRIAL DE NOVO OF ARBITRATION AWARDS.**—

(1) **TIME FOR FILING DEMAND.**—Within 30 days after the filing of an arbitration award with a district court under subsection (a), any party may file a written demand for a trial *de novo* in the district court.

(2) **ACTION RESTORED TO COURT DOCKET.**—Upon a demand for a trial *de novo*, the action shall be restored to the docket of the court and treated for all purposes as if it had not been referred to arbitration.

(3) **EXCLUSION OF EVIDENCE OF ARBITRATION.**—The court shall not admit at the trial *de novo* any evidence that there has been an arbitration proceeding, the nature or amount of any award, or any other matter concerning the conduct of the arbitration proceeding, unless—

(A) the evidence would otherwise be admissible in the court under the Federal Rules of Evidence; or

(B) the parties have otherwise stipulated.

§ 658. Compensation of arbitrators and neutrals

(a) **COMPENSATION.**—The district court shall, subject to limits set by the Judicial Conference of the United States, establish and pay the amount of compensation, if any, that each arbitrator or neutral shall receive for services rendered in each case under this chapter.

(b) **TRANSPORTATION ALLOWANCES.**—Under regulations prescribed by the Director of the Administrative Office of the United States Courts, a district court may reimburse arbitrators for actual transportation expenses necessarily incurred in the performance of duties under this chapter.

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SECTION 901 OF THE JUDICIAL IMPROVEMENTS AND ACCESS TO JUSTICE ACT

SEC. 901. ARBITRATION AUTHORIZATION BY DISTRICT COURTS.

(a) * * *

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[(c) **EXCEPTION TO LIMITATION ON MONEY DAMAGES.**—Notwithstanding section 652 (as added by subsection (a) of this section), establishing a limitation of \$100,000 in money damages with respect to cases referred to arbitration, a district court listed in section 658 (as added by subsection (a) of this section), whose local rule on the

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date of the enactment of this Act provides for a limitation on money damages, with respect to such cases, of not more than \$150,000, may continue to apply the higher limitation.】

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